

## **REMARKS**

### A. Background

Claims 1-8 and 10-13 were pending in the application at the time of the Office Action. Claims 1-8 and 10-13 were rejected as being obvious over cited art. By this response, Applicant has amended claims 1 and 10. As such, claims 1-8 and 10-13 are presented for the Examiner's consideration in light of the following remarks.

### B. Proposed Amendments

Applicant has herein amended claims 1 and 10 to recite that the jacket has "limited transparency." This amendment is supported by page 3 of the specification as originally filed. Applicant submits that the amendments to the claims do not add new matter and entry thereof is respectfully requested.

### C. Rejection on the Merits

Paragraphs 1 and 2 of the Office Action reject claim 13 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner asserts that the claim language that the "safety sealing tape completely encircles the container," is not supported by the specification. Applicant disagrees.

The specification as originally filed states that "[a]fter this jacket 8, comprising two half shells, have been put around the vial according to Fig. 1, its two parts are covered and kept together by placing a safety sealing tape 10 enclosing them." Page 4, lines 2-3 (emphasis added). One skilled in the art would understand that "enclosing" means that the safety sealing tape 10 extends all the way around the two half shells. In the original German priority

application of which the present application is an English translation, the specification clarifies this configuration by the use of two terms “umschliessend” and “ummantelt,” both meaning fully surrounded. These two terms have been translated into the single English term “enclosing.” The specification also states the “paper or synthetic material tape, enclosing the container once or repeatedly, can also be used.” Page 4, lines 8 and 9. Thus, the specification teaches that the sealing tape completely encircles at least once. In view of the forgoing, applicant submits that the language of claim 13 is supported by the specification as originally filed and withdrawal of the rejection is respectfully requested.

Paragraphs 3-5 of the Office Action reject claim 10 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Specifically, the Examiner asserts that the claimed use of the term “opaque” is inconsistent with its standard meaning. In response to the rejection, applicant has replaced “opaque” with “limited transparency.” As such, withdrawal of the rejection is respectfully requested.

Paragraphs 6-15 of the Office Action reject claims 1-4 and 11-12 under 35 USC § 103(a) as being obvious over U.S. Patent No. 3,955,020 to *Cavanagh et al.* Applicant respectfully traverses this rejection.

*Cavanagh* discloses a glass container, such as a beverage bottle 1, having a straight (i.e. cylindrical) section 7 which is covered by a plastic laminate 2 to protect the bottle from abrasive forces, to provide decoration, and to prevent the scattering of pieces of the glass container should it be broken. See Abstract. *Cavanagh* further discloses that the non-cylindrical sections of the bottle, i.e., the shoulder 3 and the heel, are also covered by plastic films 4 and 10 “to provide more complete protection of the glass bottle.” Col. 3, lines 39-40 and 51-61.

The plastic laminate 2 that covers the straight section 7 of the bottle consists of two layers - an inner lamina 31 and an outer lamina 32 - with a graphic design 33 applied to the inner surface of the outer lamina 32. See col. 4, lines 41-46. *Cavanagh* discloses that the inner lamina 31 “is opacified in order to render more attractive the graphic design which appears above it.” Col. 2, lines 1-3.

The Office Action states that *Cavanagh* teaches that

one of the plastic layers can be of an opaque design (claim 3) and is made so by adding pigment (*Cavanagh* column 5, lines 5-15), which would allow one of ordinary skill in the art to adjust the amount of light let through, if any. It is well within the ability of one of ordinary skill in the art at the time of the invention to adjust the pigment to achieve different levels of light passing through the container. One of ordinary skill in the art would be motivated to do so, based on the end use of the bottle.

Office Action, page 3. Thus, the Office Action seems to assert that *Cavanagh* teaches that opaque inner lamina 31 that covers the straight section 7 of the bottle can be formed so as to be transparent. Applicant disagrees.

As discussed above, *Cavanagh* expressly teaches that inner lamina 31 is “opaque.” As conceded by the Examiner in the above discussed rejection under Section 112, the meaning of “opaque” is “no light is allowed through.” *Cavanagh* teaches that inner lamina 31 is “opaque” so as to “render more attractive the graphic design which appears above it.” Col. 2 lines 1-3. *Cavanagh* provides no disclosure of forming inner lamina 31 as transparent. As referenced above by the Examiner in the Office Action, *Cavanagh* does expressly teach how to make inner lamina 31 opaque by adding pigment. This disclosure, however, does not teach or suggest forming inner lamina 31 as transparent. Rather, it teaches away from forming inner lamina 31 as transparent. Accordingly, because *Cavanagh* only teaches forming inner lamina 31 as opaque,

any suggestion that *Cavanagh* teaches forming inner lamina 31 as transparent is based on hindsight in view of the teachings of the present application and is thus improper.

In view of the foregoing, because *Cavanagh* teaches a container having an opaque covering, *Cavanagh* does not disclose or suggest a “container with a transparent, cylindrical container wall and a jacket covering the entire container wall, the container containing a liquid or freeze-dried galenic formulation wherein the jacket has limited transparency so that it can be determined whether in the container there are solid particles or a liquid or a liquid with still undissolved particles but not what the actual colour of the contents is,” as recited in claim 1.

It is appreciated that the above claimed invention provides unique benefits that are not taught in the art. For example, as noted in the specification, the above limitation allows for the safe administration of liquid or freeze-dried galenic formulations in blind clinical trials without compromising the anonymity/blinding requirements of such trials. For instance, a doctor can see when undissolved particles remain in a liquid in the container and thus can know when further dissolving is required, but cannot distinguish between the contents of different containers.

In further contrast to *Cavanagh*, *Cavanagh* teaches that for the plastic films 4 and 10 that cover the shoulder 3 and the heel of the container, the preferred materials are materials used in food packaging because of their clarity and transparency. For example, *Cavanagh* discloses that “[a] particularly desirable film for the cup 10 and cone 4 is ... [made from] SURLYN.” Col. 4, lines 4-6. SURLYN is a material from DUPONT that is widely used in the food packaging industry because of its outstanding clarity and transparency. As such, while the lamina 31 that covers the straight section 7 of the bottle is opaque, the other sections of the bottle are desired to

be clear. Such teaching would be understood by those skilled in the art in that consumers will want to discern the contents of the container.

Accordingly, because *Cavanagh* teaches that the lamina covering the shoulder and the heel of the bottle are transparent, *Cavanagh* does not disclose or suggest a “container with a transparent, cylindrical container wall and a jacket covering the entire container wall, the container containing a liquid or freeze-dried galenic formulation wherein the jacket has limited transparency so that it can be determined whether in the container there are solid particles or a liquid or a liquid with still undissolved particles but not what the actual colour of the contents is,” as recited in claim 1.

In view of the foregoing, applicant requests the withdrawal of the rejection of claim 1. Claims 2-4 and 11-12 depend from claim 1 and thus incorporate the limitations thereof. As such, Applicant submits that claims 2-4 and 11-12 are distinguished over *Cavanagh* for at least the same reasons as discussed above with regard to claim 1.

Paragraphs 16-20 of the Office Action reject claim 5 under 35 USC § 103(a) as being obvious over the *Cavanagh* patent in view of U.S. Patent No. 4,281,520 to *Norwood*. Applicant disagrees.

*Norwood* discloses a portable cooler for keeping a beverage bottle cool. With reference to Figure 1, the cooler includes two identical modules 10 and 12 that each bound half of a cylindrical cavity. The cavity is configured to receive a beverage bottle and has an opening through which a neck of the bottle can pass. Each module 10 and 12 is hollow so that they can each hold a refrigerant liquid which is introduced into the modules through funnel portions 26, 28 (Figure 3) and which are sealed by plugs. *Norwood* discloses that the two modules 10 and 12

are held together by straps that are manually secured. Specifically, with reference to Figure 3, *Norwood* states that

the modules are held together by means of a strap 38 provided with a loop, 40, at one end thereof, and a loop, 42, at the other end thereof. The slip loops fit around and hold both halves of the device firmly around the bottle. The loops may be closed by means of movable strap buckles, 44, 45, or stoppers which are slid down the strap as the loops are drawn tight around the device.

Col. 4, lines 7-14.

The Office Action states that “[o]ne of ordinary skill in the art at the time of the invention would be motivated to modify the plastic film used to cover bottles of *Cavanagh* with the half shell shape plastic film design used to cover bottles of *Norwood*, because the design of *Norwood* offers the ability to easily use one cover with a broad range of bottle shapes and sizes (column 3, lines 20-30).” Office Action, page 5. Applicant respectfully disagrees.

Initially, the technologies *Cavanagh* and *Norwood* are unrelated. The technology in *Cavanagh* is clearly related to the initial production and shipping of bottles. That is, the plastic laminates are applied to new bottles to protect them from scratching during initial packing, shipping and display. In contrast, the cooler of *Norwood* is an aftermarket product in which previously bottled beverages can be chilled for use during outings, such as picnics. At most, the teachings of *Norwood* would suggest placing a bottle of *Cavanagh* within the cooler of *Norwood* when it is desired to drink the beverage.

There is simply no rational basis as to why one skilled in the art would modify the continuous wrapping of the laminates in *Cavanagh* into two halves that are hinged together as taught by *Norwood*. Forming the laminate of *Cavanagh* into two halves that are hinged together by straps would be difficult and expensive to manufacture, time consuming to manually attach,

and would destroy the benefit of having a continuous laminate encircling and adhered to the bottle which prevents scattering of the glass upon fracture of the bottle.

In addition to the forgoing disadvantages of the modification, the modification serves no beneficial function and make no improvement. The rationale provided in the Office Action for the modification is that the design would offer “the ability to easily use one cover with a broad range of bottle shapes and sizes.” Applicant disagrees. In *Cavanagh*, the laminate is simply wrapped around the bottle. As such, the laminate can be easily attached to any bottle having any shape by quickly and easily wrapping it around the bottle. Pressing the laminate into two separate halves that are hinged together by straps would in fact make the laminate less adept for tightly fitting on different sized bottles. Forming the cooler of *Norwood* with two hinged halves is only a benefit in *Norwood* because it is trying to fit a number of different sized aftermarket bottles into a rigid cooler. That is not the objective in *Cavanagh*.

In view of the foregoing, applicant submits that it would not be obvious to modify the laminate of *Cavanagh* based on the teaching in *Norwood*, as discussed in the Office Action, to obtain a container “wherein the synthetic material jacket comprises two half shells connected hingedly to one another,” as recited in claim 5. As such, withdrawal of the rejection of claim 5 is respectfully requested.

Paragraphs 21-30 of the Office Action reject claims 6-8, 10 and 13 under 35 USC § 103(a) as being obvious over the *Cavanagh* patent in view of U.S. Patent No. 5,525,383 to *Witkowski*.

Initially, claims 6-8 and 13 depend from claim 1 and thus incorporate the limitations thereof. Because *Witkowski* does not cure the deficiencies of *Cavanagh* as previously discussed with regard to claim 1, applicant respectfully submits that claims 6-8 and 13 are novel over cited

prior art for at least the same reasons as previously discussed above with regard to claim 1. Furthermore, applicant respectfully submits that many if not all of the dependent claims are also independently distinguishable over the cited prior art.

For example, because neither *Cavanagh* nor *Witkowski* disclose a material jacket comprising two half shells, the combination of references does not and cannot disclose, “wherein the two half shells are kept together by a safety sealing tape enclosing the half shells,” as recited in claim 6. Furthermore, neither of the references disclose nor suggest “wherein the safety sealing tape completely encircles the container,” as recited in claim 13.

With regard to claim 10, for substantially the same reasons as previously discussed with regard to claim 1, applicant respectfully submits that the combination of *Cavanagh* and *Witkowski* does not disclose or suggest **“each container having a transparent syndical container wall, and a jacket covering the entire container wall . . . wherein the jacket has a limited transparency so that it can be determined whether in the container there are solid particles or a liquid or a liquid with still undissolved particles but not what the actual color of the contents is.”** as recited in claim 10.

In view of the foregoing, applicant respectfully requests the withdrawal of the rejection of claims 6-8, 10 and 13.

No other objections or rejections are set forth in the Office Action.

D. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art.



Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 1-8 and 10-13 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 29<sup>th</sup> day of October 2008.

Respectfully submitted,

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